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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,769	04/16/2004	James R. Anthony	2835-74916	8807
23643 7590 01/18/2008 BARNES & THORNBURG LLP 11 SOUTH MERIDIAN INDIANAPOLIS, IN 46204				
EXAMINER MACARTHUR, VICTOR L				
ART UNIT 3679		PAPER NUMBER		
MAIL DATE 01/18/2008		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/825,769

**Applicant(s)**

ANTHONY ET AL.

**Examiner**

VICTOR MACARTHUR

**Art Unit**

3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 October 2007.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 41-60 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 41-60 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 16 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(c), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(c) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/30/2007 has been entered.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 51-54 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims recite "means for protecting" (claim 51), "means for allowing" (claim 52), "means for distinguishing" (claim 53), "means for providing temperature resistance" (claim 54). Applicant has not pointed out where the amended claim is supported, nor does there appear to be a written description of the claim limitations in the application as filed such that this newly added limitation constitutes new matter.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 41-60 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The preambles of claims 41 and 56 functionally recites “for attaching to an anchor member” such that the “anchor member” does not constitute positively recited structure but rather an elements only **intended to be used** with the “coupling device”. However it is noted that the claims elsewhere (e.g., line 8 of claim 41, line 6 of claim 56) positively recites the above-mentioned structure, thus rendering the true scope of the claims unclear. If the claims are not meant to be positively limited by the “anchor member” then they should be amended to consistently recite the intended use elements functionally throughout. If the applicant actually intends the above structure to positively limit the scope of the claim then the functional intended use language must be omitted. For purposes of examination, the examiner has considered the claims without combination. See MPEP 2111.02 and *Kropa v. Robie*, 88 USPQ at 480-481; *Rowe*, 42 USPQ2d at 1553; and *IMS Technology Inc. v. Haas Automation Inc.*, 54 USPQ2d 1129, 1137 (Fed.Cir.2000).

It is unclear what element the phrase “applied thereto” (line 10 of claim 41, line 7 of claim 56) is meant to modify. Applied to the lever? Applied to the manipulation portion? Applied to the mounting location? Applied to the distal end?

It is unclear what the phraseology “normally biasing” (last line of claim 41) is meant to convey. What is the difference between normal biasing and non-normal biasing? The examiner

suggests amending claim 41 to use terminology similar to that already recited in line 9 of claim 56.

It is unclear what the phraseology “means for providing temperature resistance” (claim 54) is meant to convey. Temperature is not a force but rather a measure of the amount of heat. As all objects above absolute zero inherently have some heat and thus some temperature, how does one “resist” temperature. Does the applicant mean to say that the means merely acts as an insulator between objects such that the transfer of heat is being resisted?

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 41, 42 and 44-58 are rejected under 35 U.S.C. 102(b) as being anticipated by Anthony (US 2003/0030310).

Claim 41. Anthony discloses (fig.38) a coupling device ***fully capable of attaching to an anchor member***, the coupling device comprising: a frame (362 and 365) defining a void (void in 362 receiving left portion of 363) therein and a first opening (bottom opening in 362) to the void, and further defining a mouth (368) that is separate from the void, a lever (363) movably mounted to the frame at a mounting location (378), the lever having a distal end (right portion of 363) that is movable relative to the frame between an open position ***fully capable of allowing the anchor member to be received within***, and removed from, the mouth and a closed position ***fully***

*capable of allowing the anchor member to be retained within the mouth* (in as much as applicant's invention is intended to do, see 112 2nd rejection above), the lever defining a manipulation portion (bottom portion of 363 between 378 and 380) between the mounting location and the distal end that is responsive to a direct pushing force applied thereto (as best understood, see 112 2<sup>nd</sup> rejection above) to extend through the first opening and into the void when the lever moves from the closed to the open position, and a biasing member (386) positioned between the lever and the frame, the biasing member normally (as best understood, see 112 2<sup>nd</sup> rejection above) biasing the lever in the closed position. As detailed above, the prior art structure is substantially identical to the claimed structure such that claimed properties or functions (highlighted and italicized above) are presumed to be inherent, thus presenting a *prima facie* case (*In re Best*, 562 F.2d 1252, 1255, 195 USPQ 430, 433 [CCPA 1977]) and properly shifting the burden of submitting evidence proving otherwise to the applicant (*In re Spada*, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 [Fed.Cir. 1990]) in accordance with MPEP §2112.01. Mere allegation that the prior art is incapable of performing the claimed function, in a declaration or otherwise, is not considered proper evidence much less proof (*In re Schreiber*, 128 F.3d 1473, 1478 44 USPQ2d 1429, 1432 [Fed.Cir.1997]).

Claim 42. Anthony discloses the coupling device of claim 41 wherein the frame further defines a second opening (upper opening in 362) to the mouth, and wherein the distal end of the lever extends out of the second opening when the lever is moved from the closed position to the open position.

Claim 44. Anthony discloses the coupling device of claim 41 further comprising a cover (361) configured to receive the frame and lever therein, the cover defining a mouth (371) that aligns with the mouth defined by the frame when the frame is received within the cover.

Claim 45. Anthony discloses the coupling device of claim 44 wherein the cover defines an opening (369) through which the manipulation portion of the lever is accessible (via 371 with any long narrow tool such as a screw driver, punch, etc.)

Claim 46. Anthony discloses the coupling device of claim 44 wherein the cover comprises a plurality of surfaces that are configured to resemble corresponding portions of a head of an animal.

Claim 47. Anthony discloses the coupling device of claim 46 wherein the plurality of surfaces are configured to resemble corresponding portions of a head of a dog.

Claim 48. Anthony discloses the coupling device of claim 44 wherein the plurality of surfaces are configured to resemble one or more of a pair of ears, a pair of eyes (377), a nose (354), a nose ridge (355), whisker indentations, a rounded head and a rounded forehead, of the animal.

Claim 49. Anthony discloses the coupling device of claim 48 wherein mouth defined by the cover is configured to resemble a mouth of the animal and the distal end of the lever is configured to resemble a tooth of the animal.

Claim 50. Anthony discloses the coupling device of claim 49 wherein the plurality of surfaces are configured to resemble corresponding portions of a head of a dog.

Claim 51. Anthony discloses the coupling device of claim 41 further comprising means (354) for protecting the lever from dust and chipping.

Claim 52. Anthony discloses the coupling device of claim 41 further comprising means (365) for allowing a user to simultaneously maintain a grip on the coupling device while moving the lever to the open position.

Claim 53. Anthony discloses the coupling device of claim 41 further comprising means (354) for distinguishing by either or both of feel and sight the coupling device from another device.

Claim 54. Anthony discloses the coupling device of claim 41 wherein the frame and the lever comprise a frame assembly, the frame assembly being formed of metal, and further comprising means (365) for providing temperature resistance from the metal of the frame assembly.

Claim 55. Anthony discloses the coupling device of claim 41 further comprising a mounting assembly (389) mounted to the frame and configured to attach to any of a flexible, semi- flexible, semi-rigid and rigid elongate member.

Claim 56. Anthony discloses (fig.38) a coupling device *fully capable of attaching to an anchor member*, the coupling device comprising: a frame (362) defining a mouth (368), a lever (363) movably mounted relative to the frame and having an open position that is *fully capable of allowing the anchor member to be received within, and removed from, the mouth* and a closed position that is *fully capable of allowing retention of the anchor member within the mouth*, the lever having a manipulation portion (bottom portion of 363) responsive to a pushing force applied thereto to move the lever between the closed position and the open position. a biasing member biasing the lever toward the closed position, and a cover (361) configured to receive the frame, lever and biasing member therein, the cover defining a mouth (371) that aligns with the



mouth defined by the frame when the frame is received within the cover, the cover further defining a plurality of surfaces that are configured to resemble corresponding portions of a head of a dog. As detailed above, the prior art structure is substantially identical to the claimed structure such that claimed properties or functions (highlighted and italicized above) are presumed to be inherent, thus presenting a *prima facie* case (*In re Best*, 562 F.2d 1252, 1255, 195 USPQ 430, 433 [CCPA 1977]) and properly shifting the burden of submitting evidence proving otherwise to the applicant (*In re Spada*, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 [Fed.Cir. 1990]) in accordance with MPEP §2112.01. Mere allegation that the prior art is incapable of performing the claimed function, in a declaration or otherwise, is not considered proper evidence much less proof (*In re Schreiber*, 128 F.3d 1473, 1478 44 USPQ2d 1429, 1432 [Fed.Cir.1997]).

Claim 57. Anthony discloses the coupling device of claim 56 wherein the plurality of surfaces are configured to resemble one or more of a pair of ears, a pair of eyes, a nose, a nose ridge, whisker indentations, a rounded head and a rounded forehead, of the dog.

Claim 58. Anthony discloses the coupling device of claim 57 wherein the mouth defined by the cover is configured to resemble a mouth of the dog and the distal end of the lever is configured to resemble a tooth of the dog.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over Anthony (US 2003/0030310) in view of Lewis (U.S. Patent 3,083,431).

Claim 43. Anthony discloses the coupling device of claim 41 wherein the lever further defines a bias engagement portion (385), the biasing member positioned between the frame and the bias engagement portion of the lever. Anthony's location of the engagement portion biases towards the closed position as does the applicant's. However Anthony's location of the engagement portion is not located between the mounting location and the distal end. Lewis teaches that it is extremely well known in the coupling device art to position an engagement portion (portion of 7 engaging 18) to be located between a mounting location (9) and a distal end (end of 7 opposite from 9). One of ordinary skill would easily recognize that the Lewis position reduces the number of parts necessary since Anthony's element 365 would no longer be necessary; thus simplifying construction and reducing cost. It has generally been recognized that the rearranging of parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70. Furthermore, the applicant has failed to demonstrate criticality by any showing of unexpected result derived from locating the engagement portion between the mounting location and distal end over any other position that biases to the closed position. Wherein a specific limitation has no criticality, case law can be relied upon as the sole rationale in an obviousness

rejection. See MPEP 2144.04. Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify Anthony's engagement potion to be located between the mounting location and distal end, as taught by Lewis, for reducing the number of parts, simplifying construction and reducing cost; and further since the limitation has no criticality and has thus been established by the case law cited above to be an obvious design consideration within the skill of the art. "[T]he results of ordinary innovation are not the subject of exclusive rights under the patent laws. Were it otherwise patents might stifle, rather than promote, the progress of useful arts. See U.S. Const., Art. I, section 8, cl.8." In re KSR International Co. v. Teleflex Inc., 82 USPQ2d 1385 (U.S. 2007).

Claims 59 and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson (U.S. Patent 1,273,717).

Claims 59 and 60. Anthony discloses the coupling device of claim 56, wherein the cover is metal (para.0078) but does not disclose that the metal is colored with black paint. The examiner takes Official Notice that black paint is very well known in the art to slow corrosion of metal parts. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Anderson metal to be painted black for the benefit of slowing corrosion. The examiner's Official Notice statement that "black paint is very well known in the art to slow down corrosion of metal parts" (see rejection of claim 40 in the Office Action mailed 5/30/2007) is now taken to be admitted prior art because applicant's response (see applicant's remarks filed 10/30/2007) has failed to traverse the examiner's assertion of Official Notice. See 37 CFR 1.111(b). See also Chevenard, 139 F.2d at 713, 60 USPQ at 241.

Note that, even though not present in the current version of claims, the examiner's Official Notice statement that "it is very well known in the art to use illumination devices such as LED (light emitting diodes) for the benefit of facilitating nighttime use" (see rejection of claim 27 in the Office Action mailed 5/30/2007) is now taken to be admitted prior art because applicant's response (see applicant's remarks filed 10/30/2007) has failed to traverse the examiner's assertion of Official Notice. See 37 CFR 1.111(b). See also Chevenard, 139 F.2d at 713, 60 USPQ at 241.

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new grounds of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor MacArthur whose telephone number is (571) 272-7085. The examiner can normally be reached on 8:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (571) 272-7087. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197.

January 18, 2008

/Victor MacArthur/  
Examiner, Art Unit 3679